IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Notice of Motion No.1058 of 2003
In
Income Tax Appeal (L) No.285 of 2003

The Commissioner of Income Tax .. Appellant
v/s.
Shri Bharat Kumar Modi .. Respondent

WITH

Notice of Motion No.1059 of 2003
In
Income Tax Appeal (L) No.288 of 2003

The Commissioner of Income Tax .. Appellant
v/s.
Smt.Kusumdevi Modi .. Respondent

WITH

Notice of Motion No.1060 of 2003
In
Income Tax Appeal (L) No.287 of 2003

The Commissioner of Income tax .. Appellant
v/s.
Shri Ashish Modi .. Respondent

Mr.A.N.Kotangale with Mr.R.G.Bhatt i/by K.B.Rao for appellants.

Mr.F.Irani with Mr.A.K.Jasani for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 5th September 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. All the above Motions seek condonation of delay of 154 days in filing the Appeals.

Affidavits in support have been filed giving the chronology of various steps taken from time to time and as to why the delay has been caused.

3. Mr.Kotangale appearing for the appellants submits that amongst others the question raised in all the Appeals is with respect to finding given by the Tribunal, which, according to him, requires reconsideration, particularly with respect to the agricultural income of the respondents-assessees.

4. Mr.Irani appearing for the responidents has opposed condonation of delay. He has pointed out that the impugned order of the Tribunal is a common order concerning some 20 parties and in the case of 5 of them, the delay was not condoned when those Apepals were time barred and the Motions were taken ouit for condonation of delay. That was for a lesser period of 66 days to 113 days. He has drawn our attention to those orders passed in Notice of Motion No.3591 of 2002 in Appeal (Lodging) No.1069 of 2002 and other orders. He has, however, very fairly pointed out that subseqeuntly another order has been passed in Notice of Motion No.1057 of 2003 in Income Tax Appeal (Lodging) No.286 of 2003. He, however, submits that for the sake of uniformity, the

earlier orders be followed.

5. Mr.Kotangale appearing for the appellants on the other hand pointed ouit that at the time when the Motions were taken out in the earlier proceedings, the Court had asked the applicants to file a detailed Affidavit and the Court has recorded in paragraph-4 that despite the matter having been adjourned thrice, a supplementary Affidavit setting out sufficient cause for delay has not been filed. As against that in the matter in which the delay was condoned a chronology of events had been included in the Affidavit which has been specifically mentioned in the order condoning delay. He points out that in the present case also a detailed chronology of events has been filed.

6. In our view, apart from the explanation on delay, there is also an additional submission of Mr.Kotangale with respect to the merits of the matter. The Apex Court has recently held in **State of Nagaland vs. Lipok AO reported in 2005 (183) E.L.T. 337** that when it comes to question of public cause and interest, one must look to the larger aspect of the matter. We keep those observations in mind and, therefore, allow all the

above Motions and condone delay in all the matters. Motions are allowed in terms of prayer clause (a). Delay condoned in all the matters. All the Motions disposed of.

7. All Appeals be listed for admission on 18th September 2006.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)